

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

<i>In the Matter of</i>)	
)	CG Docket No. 02-278
Petition of Best Doctor's, Inc.)	CG Docket No. 05-338
For Declaratory Ruling)	
)	

**REPLY COMMENT IN OPPOSITION TO COMMENT FILED BY
ENCLARITY INC. IN SUPPORT OF PETITION OF BEST DOCTOR'S, INC.**

Florence Mussat, M.D. S.C. ("Mussat") respectfully submits this Reply Comment in response to a Comment filed by Enclarity Inc. ("Enclarity"). Enclarity filed a Comment in support of the petition for declaratory ruling filed by Best Doctor's Inc. The Commission sought public comment on Best Doctor's petition filed in GC Dkt. Nos. 02-278 & 05-338.¹ Mussat's reply is timely filed. The petition for declaratory ruling filed by Best Doctor's, Inc. should be rejected. Enclarity, Inc.'s comment in support of the petition is frivolous, and represents a bad-faith attempt to forum shop.

INTRODUCTION AND SUMMARY

Florence Mussat, M.D., S.C., is an Illinois corporation, located in Chicago, owned by a plastic surgeon, Dr. Florence Mussat. Mussat is a frequent recipient of unwanted junk faxes from companies with whom it does not have an established business relationship with, nor consented to have such companies send a fax to it. Dr. Mussat views these junk faxes as a nuisance, an invasion of privacy, wasting her small office's time and resources. Mussat has, since no later than November 2011, implemented an oral office policy to instruct any company to whom Mussat does not have a business relationship with who desires to send a fax to the office, to indicate to the caller

¹ Public Notice, Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Declaratory Ruling by Best Doctors., Inc., GC Docket Nos. 02-278 & 05-338, DA 18-1296 (rel. Dec. 21, 2018).

not to send a fax the office. Likewise, since January 6, 2014, under the contact section of Mussat's website has been posted, in part, "Please Do not Fax Advertisements".²

Mussat is currently the plaintiff in a federal lawsuit in the Northern District of Illinois captioned, *Florence Mussat, M.D., S.C. v. Enclarity, Inc., et al*, 16-cv-7643 (N.D. Ill.). A copy of the Amended Complaint and the exhibits are attached.³ The Defendant, Enclarity, Inc., has likewise commented in support of Best Doctors, Inc.'s Petition for Declaratory Ruling. Enclarity's Comments, however, omitted reference to *Mussat*, and only referenced *Matthew N. Fulton, D.D.S. v. Enclarity, Inc.*, No. 16-13777 (E.D. Mich.).

The facts here, like most junk fax cases, are not particularly juicy.⁴ However the facts here illustrate Enclarity's refusal to accept Mussat's "no" to Enclarity's unwanted fax campaign, and Enclarity's statement in the subject form fax that, "[t]his information will be verified once each year" was not true, as demonstrated by the 2016 faxes sent weeks apart from each other.⁵ The facts here demonstrate why Courts and the FCC should not limit their inquiry to the fax itself and should consider all facts pled in the complaint as well as those that develop through discovery.

On or around February 11, 2015, Enclarity, Inc., sent Mussat a fax.⁶ On February 19, 2015, Mussat's counsel faxed to the number listed on the fax Mussat received, a cease and desist letter.⁷ On or around May 25, 2016, Enclarity, Inc., sent Mussat another form fax.⁸ On or around June 8,

² <https://www.fmussatmd.com/contact-chicago-plastic-surgeon/>

³ Appendix 1.

⁴ See *CE Design, Ltd. v. Prim. Bus. Media, Inc.*, 606 F.3d 443, 444 (7th 2010).

⁵ Appendix 1, Am. Compl. Exhibit B, C, D.

⁶ Appendix 1, Am. Compl. Exhibit A.

⁷ Appendix 1, Am. Compl. Exhibit B.

⁸ Appendix 1, Am. Compl. Exhibit C.

2016, Enclarity, Inc., sent Mussat yet another form fax.⁹ On July 28, 2016, Mussat filed suit, and amended her complaint on September 13, 2016.

The *Mussat* case involves a fax, which at first blush, does not seem to relate to an advertisement solely on the face of the fax itself. In reality, Enclarity's fax had a hidden advertising component built into it, to draw potential new customers to a LexisNexis' website to view the availability of that company's products. Within the fax was Enclarity's web address, a logical place to go if you wanted to find out more about what the fax was about, or to find a way to have the company stop sending your faxes after it ignored Mussat's attorney's prior cease and desist faxed letter. When Mussat's office manager went to the Enclarity's website, it automatically forwarded the computer's browser to LexisNexis's website that displayed LexisNexis products and, also included an opt-out section to stop further junk faxes.¹⁰ One of the links when clicked, shows a product similar to a product used by Mussat's office.¹¹ Additionally, Mussat's office manager called the number listed by Enclarity in the fax, and heard the pre-recorded message will identify that the caller has called "LexisNexis" and in part also directs the caller to <http://www.lexisnexis.com/risk/health-care/> for more information.¹² Everything about Enclarity's for fax was related to attempting to generate business for LexisNexis, yet it was not discernible only looking at the face of the fax itself.

On October 24, 2016, Enclarity moved to dismiss Mussat's case. On March 5, 2018, the court issued his Memorandum Opinion and Order denying Enclarity's motion to dismiss.¹³ The

⁹ Appendix 1, Am. Complt. Exhibit D.

¹⁰ Appendix 1, Am. Complt. ¶¶ 24-26, 29-30, Exhibit E.

¹¹ Appendix 1, Am. Complt. ¶ 29.

¹² Appendix 1, Am. Complt. ¶ 13.

¹³ *Mussat v. Enclarity, Inc.*, Case: 1:16-cv-07643, 2018 WL 1156200 (N.D. Ill. Mar. 5, 2018).

court accepted, Mussat’s “alternative argument¹⁴ that the complaint also plausibly alleges that the Enclarity fax violated the TCPA because it served as a pretext to an advertisement”, finding that Mussat’s:

allegations go beyond mere conclusory statements that the fax produced an economic benefit to Enclarity and instead detail how the faxes caused Mussat to visit a website where products and services were offered for sale. Repeat faxing of a form that provides a website and a phone number but no other information on how to unsubscribe or opt-out from receiving the form would logically drive the recipient to call the phone number or visit the website. It is plausible that Enclarity used the form faxes as part of its marketing operations to get health care providers like Mussat to traffic the LexisNexis website, where its products and services were advertised.¹⁵

On May 31, 2018, Enclarity filed a Motion for Judgment on the Pleadings arguing that the district court, “lacks personal jurisdiction over the claims of any putative class member outside of Illinois pursuant to the United States Supreme Court’s decision in *Bristol-Meyers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017).”¹⁶ On January 22, 2019, the district court denied Enclarity’s motion, and instructed the parties to resume discovery.¹⁷

In *Fulton*, the Sixth Circuit reversed the decision of the district court in granting Enclarity’s motion to dismiss and ordered the parties to proceed with discovery. Unsatisfied with the Sixth Circuit’s decision, Enclarity filed an *en banc* petition which was denied on December 27, 2018, and is now proceeding with filing a petition for writ of certiorari. Because Enclarity has not been successful in advancing its arguments in the courts, it has turned to the FCC in an effort to engage

¹⁴ The court first found that the fax was an advertisement based on the four corners of the fax. *Id.* at *3.

¹⁵ *Id.* at *4.

¹⁶ *Florene Mussat M.D. S.C., v. Enclarity Inc., et al.*, Case: 1:16-cv-07643, Document #: 62, PageID #:321 (N.D. Ill. May 31, 2018).

¹⁷ *Florene Mussat M.D. S.C., v. Enclarity Inc., et al.*, Case: 1:16-cv-07643, 2019 U.S. Dist. LEXIS 9819 * 18 (N.D. Ill. Jan. 22, 2019).

the Commission to reject its prior orders and re-interpret the TCPA.

Now unhappy with its results before the district court in *Mussat* and the United States Court of Appeals for the Sixth Circuit, in *Fulton*¹⁸, Enclarity has filed its comments with the FCC in support of the petition for declaratory ruling filed by Best Doctor's Inc. Despite the fact that two lawsuits remain pending against it, Enclarity is incredulous and continues to send its junk faxes.¹⁹

Enclarity seeks to gather information from health care providers so that it can sell it for a profit to its customers. More importantly, the faxes are a part of Enclarity's overall marketing plan to raise health care providers' awareness of Enclarity's services and the LexisNexis Risk Solutions brand, and to sell them services.

Enclarity's junk faxing even despite requests to cease and desist as in the case of *Mussat* illustrates why the FCC should not create a rule that only the face of the junk fax determines whether it is subject to the TCPA.

ARGUMENT

I. ENCLARITY IS FORUM SHOPPING

Enclarity's request for a ruling by the Commission at this time is inappropriate. The *Mussat* matter has been pending for almost 3 years. *Mussat* was filed on July 28, 2016 and *Fulton* was filed on October 24, 2016. Counsel for Enclarity appeared in both cases and continued to litigate the cases in different venues purposefully. Virtually, the entire time *Fulton* has been pending, it has been spent briefing motions and appeals. While *Mussat* has spent some time briefing motions, the parties have also conducted discovery and are now in a position to proceed with further advancing the case. Enclarity's attempt to seek adjudication from the FCC as to whether the fax is an advertisement because it is displeased with the manner in which the *Mussat* and *Fulton* are

¹⁸ *Matthew N. Fulton, D.D.S., P.C. v. Enclarity, Inc.*, 907 F.3d 948 (6th Cir. 2018).

¹⁹ Appendix 2.

proceeding is impermissible forum shopping and should not be encouraged.

II. FAXES SENT BY ENCLARITY ARE ADVERTISEMENTS

The TCPA makes unlawful the “use of any telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine...” 47 U.S.C. §227(b)(1)(c). The TCPA defines an “unsolicited advertisement” as: “any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person’s prior express invitation or permission, in writing or otherwise.” 47 U.S.C. § 227(a)(5). The faxes sent by Enclarity plainly qualify.

A. Two Courts Have Recognized that the Fax is an Advertisement

While not in the context of a case under the TCPA, the Seventh Circuit addressed some elements of commercial speech and the subliminal nature of advertising, as follows:

We know from common experience that commercial advertising occupies diverse media, draws on a limitless array of imaginative techniques, and is often supported by sophisticated marketing research. It is highly creative, sometimes abstract, and frequently relies on subtle cues. The notion that an advertisement counts as ‘commercial’ only if it makes an appeal to purchase a particular product makes no sense today, and we doubt that it ever did. An advertisement is no less ‘commercial’ because it promotes brand awareness or loyalty rather than explicitly proposing a transaction in a specific product or service. Applying the ‘core’ definition of commercial speech too rigidly ignores this reality. Very often the commercial message is general and implicit rather than specific and explicit.²⁰

The Seventh Circuit found that even though “this ad contains not a single word about the specific products that Jewel-Osco sells, nor any product-specific art or photography” it nevertheless was commercial speech, an advertisement.²¹

As set forth above, the Court in *Mussat* held:

The form fax at issue here, on its face declares the commercial availability of LexisNexis’ services. The fax states that LexisNexis validates and updates health care provider contact information for its clients to that its clients can use the information for clinical summaries,

²⁰ *Jordan v. Jewel Food Stores, Inc.*, 743 F.3d 509, 518 (7th Cir. 2014).

²¹ *Id.* at 519.

prescription renewals, and other sensitive communications. *Am. Compl. Ex. A, ECF No. 24*. The fax’s use of the word “client,” which is another word for customer, indicates that LexisNexis provides the health care provider information for a fee – in other words, that its availability is commercial. The fax also states that LexisNexis verifies provider information once a year. *Id.* While the fax is not an “overt sales pitch,” it does make clear that one can purchase from LexisNexis access to health care provider information that minimizes the potential for privacy risks because it is verified and updated on an annual basis. Under the Seventh Circuit’s ruling in *Turza*, a fax like the one at issue here, which declares the availability of the defendant’s services by listing those services and providing the defendant’s contact information, may constitute an advertisement under the TCPA. 728 F.3d at 685. The fact that the fax also seeks to verify the recipients contact information does not eliminate its utility as an advertisement.

Mussat, 2018 WL 1156200, at *4 (N.D. Ill. Mar. 5, 2018). The *Mussat* Court also stated that plaintiff alleged the fax “served as a pretext to an advertisement.” *Id.*

The Sixth Circuit in *Fulton* held that the district court’s holding “reflect[ed] an improper understanding of *Sandusky* and impose undue restrictions on TCPA claims.” *Matthew N. Fulton, D.D.S., P.C. v. Enclarity, Inc.*, 907 F.3d 948, 952 (6th Cir. 2018).

In *Fulton*, the parties did not dispute that the fax was unsolicited and lacked an opt out notice. The Sixth Circuit held that Fulton’s complaint alleged that “the fax Fulton received was an unsolicited advertisement because it served as a commercial pretext for future advertising opportunities.” *Id.* at 955.

At this stage, both the Sixth Circuit as well as the U.S. District Court for the Northern District of Illinois have held that Enclarity’s faxes were clearly sent to promote the commercial enterprise of Enclarity and are not merely an informational message as Enclarity suggests.

Mandating the courts to look only at the face of the fax, without allowing discovery behind the purpose of the fax, if the plaintiff pleads a plausible basis that the fax is a pretext to advertising, is akin to accepting Obi-Wan Kenobi’s statement, “these aren’t the droids you are looking for”²²,

²² See *Star Wars: Episode IV – A New Hope* (1977).

or believing that “beauty is only skin deep.”²³ Given the facts in *Mussat*, one can surmise that Enclarity’s fax was sent with the hopes to make a profit for LexisNexis, directly or indirectly, from Mussat and other similarly situated doctors. Indeed, facsimile machines are frequently used by doctors because they have the ability to send and receive private information without being hacked. Blasters of junk faxes know all too well that doctors read whatever comes in by fax, as the fax is used to send and receive confidential patient information, and by sending a fax to a doctor, bypasses the receptionist, the individual(s) who is frequently the doctor’s gatekeeper.²⁴

To adopt the face of the fax rule that Best Doctor’s and Enclarity seek the FCC to create, will encourage businesses to use ever more creative, abstract, and subtle cues in their fax advertising campaigns to mass blast faxes knowing that a court can only look at the face of the fax, knowing that if adopted a federal court must dismiss the case under Rule 12(b)(6), or a state court under its similar state court rule. In considering whether to adopt such a rule, the Commission should look at the face of the form faxes sent by Enclarity and ask two questions: (1) “Looking at the face of the subject fax, and nothing more, could the district court judge conclude that at the time the faxes were sent, the website www.enclarity.com/proiderfaqs.php would be set up to redirect the web browser to <http://www.lexisnexis.com/risk/health-care/provider-form.aspx> which displayed one of defendant’s product similar to one used by Mussat, and an opt-out notice?”; and (2) “Looking at the face of the subject fax, and nothing more, could the district court judge conclude that at the time the faxes were sent, the telephone number

²³ See Cambridge Dictionary, “Saying. Used to say that a person’s character is more important than how they look.” Available at <https://dictionary.cambridge.org/us/dictionary/english/beauty-is-only-skin-deep> (last visited Feb. 8, 2019).

²⁴ A doctor’s receptionist helps in managing the doctor’s schedule and if desired will schedule in person appointments for vendors, such as pharmaceutical companies via their “drug reps” to discuss their product. Fax blasting on the other hand automatically shifts the costs involved with the “presentation” to the doctor’s office who must keep their fax machines on to receive private health information.

(612) 746-2853 would contain a pre-recorded message instructing the caller to go to <http://www.lexisnexis.com/risk/health-care/> for more information, which included the text “Product of Service Inquiries”?” The answer to these questions is of course, no. As such, the FCC should not adopt a face of the fax rule in determining whether the fax is subject to the TCPA.

B. Neither *Medco*, Nor *Arriva* Support Enclarity’s Position

Enclarity relies on *Sandusky Wellness Center, LLC v. Medco Health Solutions, Inc.*, 788 F.3d 218 (6th Cir. 2015), to support its argument that faxes that are purely informational are not actionable under the TCPA.

In *Medco*, the fax at issue described medications, parts of the formulary, which were not sold by Medco and the faxes did not seek a relationship with the recipient. The Sixth Circuit in *Medco* stated, “To be an ad, the fax must promote goods or services that are for sale, and the sender must have profit as an aim.” *Id.* at 223. Enclarity contends that since the faxes it sent are informational and do not offer any product or service within the four corners of the document, the faxes are not commercial solicitations actionable under the TCPA.

Enclarity’s reliance on *Medco* is misplaced. First, as noted in *Fulton*, *Medco* is a summary judgment decision which was based on facts developed in discovery and beyond the four corners of the fax. Unlike the faxes in *Medco*, the goods and services identified on the website that is on the Enclarity junk faxes are sold by LexisNexis and are commercially available to all healthcare providers.

Unlike *Medco*, Enclarity has an interest in soliciting business from the recipients of these faxes, as well as making sure it uses information from its recipients for its own commercial purposes. Moreover, the potential benefit Enclarity may derive from sending the junk faxes is not the “speculative down-the-stream evidence” that *Medco* referenced. 788 F.3d at 225. Enclarity’s faxes certainly contemplate a commercial relationship between it and the recipient. *Physicians*

Healthsource, Inc. v. Salix Pharmaceuticals, Inc., 15-CV-36-D, 2015 WL 4713266 (E.D.N.C. Aug. 7, 2015) (Distinguishes *Medco* in holding that the faxes were advertisements where the sender is a manufacturer of the drugs described in the faxes and where recipients who could prescribe the drugs created a commercial motivation for the drug manufacturer to send the faxes); *Green v. Time Ins. Co.*, 629 F.Supp.2d 834, 837 (N.D. Ill. 2009) (“The TCPA does not require that an unwanted and uninvited fax make an overt sales pitch to its recipient in order for a cause of action to exist. . . .”).

In *Florence Endocrine Clinic, PLLC v. Arriva Medical, LLC*, 858 F.3d 1362 (11th Cir. 2017), the Eleventh Circuit focused on whether the faxes promoted the sale of Arriva’s goods. However, the faxes in *Arriva* are much different than what was sent by Enclarity. The faxes in *Arriva* were sent to physicians who were asked to complete an order form for a patient that requested an Arriva product. *Id.* at 1367. The plaintiff in *Arriva* did not allege that the faxes were sent to the doctors to induce them to purchase Arriva’s products or to entice them to prescribe Arriva products to other patients who had not submitted orders. The faxes were merely sent to “facilitate a purchase made by that patient.” *Id.*

While the faxes at issue in *Medco* and *Arriva* may not have been considered advertisements, that does not support a finding that the faxes sent by Enclarity are not advertisements. Most critically, the Enclarity faxes, unlike the faxes in both *Medco* and *Arriva* were not sent pursuant to any sort of previous relationship – they were unsolicited. The Comment filed by Enclarity in support of the petition filed by Best Doctor’s Inc. requesting a declaration that its faxes are not advertisements under the TCPA is frivolous and should be denied.

C. Under The 2006 FCC Order Covers All Unsolicited Faxes Promoting Goods and Services of the Sender – Even at *No Cost* – are Covered by the TCPA.

The TCPA defines “advertisement” as “any material advertising the commercial availability or quality of any property, goods, or services[.]” 47 U.S.C. §227(a)(4). The Fourth

Circuit recently held that offers of free goods or services are advertisements under the TCPA. *Carlton & Harris Chiropractic, Inc. v. PDR Network, LLC*, 883 F. 3d 459 (4th Cir. Feb. 23, 2018). The Fourth Circuit discussed the 2006 Order by the FCC, wherein it unambiguously stated that “facsimile messages that promote goods or services even at no cost, such as free magazine subscriptions, catalogs, or free consultations or seminars, are unsolicited advertisements under the TCPA’s definition.” *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Dkt. 02-278, 05-338, FCC 06-42, 21 FCC Rcd. 3787, 38 Comm. Reg. (P&F) 167, 2006 WL 901720 (April 5, 2006) (hereinafter, “2006 Order”). The 2006 Order goes on to specifically focus on faxes promoting “free seminars,” explaining its reasoning as follows:

In many instances, “free” seminars serve as a pretext to advertise commercial products and services. Similarly, “free” publications are often part of an overall marketing campaign to sell property, goods, or services. For instance, while the publication itself may be offered at no cost to the facsimile recipient, the products promoted within the publication are often commercially available. Based on this, it is reasonable to presume that such messages describe the “quality of any property, goods, or services.” Therefore, facsimile communications regarding such free goods and services, if not purely “transactional,” would require the sender to obtain the recipient’s permission beforehand, in the absence of an EBR. (*Id.*)

Under the plain language of the statute and the 2006 Order, a fax offering a “free seminar” discussing a service or product that defendant sells to anyone, describes the “quality of any property, goods, or services” and is an “advertisement” under the TCPA’s definition. (*Id.*)

Enclarity has not offered any meaningful reason to depart from the 2006 Order. In *PDR Network, LLC*, the fax offered a free 2014 *Physicians Desk Reference* eBook. In reversing the dismissal by the district court, the Fourth Circuit explained that the “[FCC’s] decision to prohibit all unsolicited offers for free goods or services is (in our view) a reasonable one. A per se rule advances the purpose of the underlying statute by protecting consumers from junk faxes. The rule also helps would-be violators avoid inadvertent liability by eliminating the need for a case-by-case

determination of whether a fax is indeed a free offer, or merely a pretext for something more.” *Id.* at *6.

In *Physicians Healthsource, Inc. v. Boehringer Ingelheim Pharmaceuticals, Inc.*, 847 F.3d 92 (2d Cir. 2017), the majority of the Court of Appeals for the Second Circuit held that “at the pleading stage, where it is alleged that a firm sent an unsolicited fax promoting a free seminar discussing a subject that relates to the firm’s products or services, there is a plausible conclusion that the fax had the commercial purpose of promoting those products or services. Businesses are always eager to promote their wares and usually do not fund presentations for no business purpose. The defendant can rebut such an inference by showing that it did not or would not advertise its products or services at the seminar, but only after discovery.” (847 F.3d at 95) *Boehringer* was cited with approval in *America's Health & Resource Center, Ltd. v. Promologics, Inc.*, 16cv9281, 2017 WL 5001284, *3 (N.D.Ill., Nov. 2, 2017).

Despite Enclarity’s characterization of its faxes as informational, the Seventh Circuit in *Holtzman v. Turza*, 728 F.3d 682 (7th Cir. 2013), held that there is no “informational communication” exception to determining whether the faxes are advertisements.

In *Holtzman*, the Seventh Circuit held that the FCC statement about “incidental” advertisements could be ignored because it “appears not in the regulation but in the explanation the agency gave when adopting the regulation.” *Id.* at 687. “It does not elaborate on the meaning of the word ‘advertisement’ in the statute or regulation. Instead it discusses the meaning of ‘informational communication’, a phrase that does not appear in either § 227 or the regulation. It seems to be a species of untethered legislative history - and the Supreme Court has told us that, although legislative history may assist in understanding an ambiguous text, a freestanding declaration untied to an adopted text must be ignored.” *Id.* at 688.

CONCLUSION

On this record, no action by the Commission is warranted. There are no special circumstances to warrant a deviation from the general rule. Rather, a declaratory ruling, if permitted under these circumstances would only serve to allow Enclarity to escape liability for thousands of unsolicited fax advertisements. The Commission should deny Best Doctor's Inc.'s petition for the reasons stated above. Enclarity's comment is nothing more than a baseless attempt to delay and complicate an enforcement action by the recipients of unsolicited advertising faxes.

Dated: February 8, 2019

Respectfully submitted,

s/ Curtis C. Warner
CURTIS C. WARNER
WARNER LAW FIRM, LLC
350 S. Northwest HWY, Ste. 300
Park Ridge, IL 60068
Telephone: (847) 701-5290
cwarner@warner.legal

Daniel A. Edelman
Heather Kolbus
EDELMAN, COMBS, LATTURNER &
GOODWIN, LLC
20 South Clark Street, Suite 1500
Chicago, Illinois 60603
(312) 739-4200
(312) 419-0379 (FAX)

Counsel for Florence Mussat M.D. S.C.

APPENDIX 1

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FLORENCE MUSSAT, M.D. S.C.,)	
individually and on behalf)	16-cv-7643
of similarly situated persons,)	
)	Honorable John J. Tharp
Plaintiff,)	
)	
v.)	
)	
ENCLARITY, INC., and)	
CORPORATE DOES 1-3,)	
)	Trial By Jury Demanded
Defendants.)	

AMENDED COMPLAINT - CLASS ACTION

INTRODUCTION

1. Plaintiff Florence Mussat, M.D., S.C., (“Plaintiff”), brings this action individually and on behalf of similarly situated persons to secure monetary and injunctive redress for Defendants Enclarity Inc., and Corporate Does 1-3, (collectively “Defendants”), unsolicited advertisement in the form of (Exhibit A).

2. Notably even after Plaintiff, though her legal counsel, demanded in writing on February 19, 2015, for Defendant to stop sending faxes to Dr. Mussat’s office, (Exhibit B), Defendants nevertheless continued to do so in May and June of 2016. (Exhibits C, D).

JURISDICTION AND VENUE

3. This Court has jurisdiction under 28 U.S.C. § 1331 (Federal Question) and 47 U.S.C. § 227 (“TCPA”). *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740 (2012); *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446 (7th Cir. 2005).

4. Venue and personal jurisdiction in this District are proper because the act complained of was directed to Plaintiff in Chicago, Illinois.

PARTIES

5. Plaintiff is an Illinois Corporation located in Chicago, Illinois, Florence Mussat is the owner of Plaintiff, and Plaintiff is the subscriber to the fax number (773) 868-3700.

6. On or around September 11, 2013, LexisNexis® Risk Solutions acquired Enclarity, Inc. an industry-leading health case data and information solutions company. <http://www.lexisnexis.com/risk/newsevents/press-release.aspx?Id=1378727231315287>

7. LexisNexis® Risk Solutions includes services to its clients that are focused on monitoring and reporting health care provider information, and has publically stated that it has “compiled the largest, most accurate database of medical provider business and professional demographic data in the United States.”

8. Corporate Does 1-3 are believed to have been involved with the approval of and the sending of the subject form fax, Exhibit A, or whose products are advertised on the website to which www.enclarity.com/providerfaqs.php directs the web browser to and are unknown to Plaintiff at this time.

FACTS

9. Under the American Recovery and Reinvestment Act of 2009, all Personal Health Information (“PHI”) communications must be secure, and therefore doctors use their fax machines to transmit PHI as part of their business.

10. As part of Enclarity, Inc.’s and/or one of the Corporate Does 1-3’s, business, it/they sent or caused to be sent faxes in the form of Exhibit A to healthcare providers in the United States.

11. Faxes in the form of Exhibit A are used by Enclarity, Inc. and/or Does 1-3 as a

means of obtaining or verifying public information so that it can pass back that information to its customers, on information and belief, at a cost.

12. The form fax, Exhibit A, informs the recipient of the availability of LexisNexis' services that, "[w]e [LexisNexis] validate and update the fax in our system so our clients can use them for clinical summaries, prescription renewals, and other sensitive communications." (Exhibit A).

13. If a person calls the (612) 746-2853 telephone number listed on the bottom of the subject fax, a pre-recorded message will identify that the caller has called "LexisNexis" and in part also directs the caller to <http://www.lexisnexis.com/risk/health-care/> for more information.

14. The fax number (866) 699-0422, listed on the subject fax, is a fax number that reaches LexisNexis, alternatively one of the Corporate Doe Defendants.

15. If a person were to type in the web address listed at the bottom of the subject fax, www.enclarity.com/providerfaqs.php, the web browser is directed to <http://www.lexisnexis.com/risk/health-care/provider-form.aspx>, a website believed to be LexisNexis'.

16. On or around February 11, 2015, Enclarity, Inc. and/or Corporate Does 1-3, sent or caused to be sent a fax, a copy of which is attached as Exhibit A.

17. Plaintiff received the fax, a copy of which is attached as Exhibit A.

18. Plaintiff's website specifically states following the office's fax number "(Do not Fax Advertisements Please)" <http://www.fmussatmd.com/contact-chicago-plastic-surgeon/>.

19. On February 19, 2015, one or more of the Defendants were provided written notice to stop faxing Dr. Florence Mussat. (Exhibit B).

20. On or around May 25, 2016, Enclarity, Inc., and/or Corporate Does 1-3, sent or

caused to be sent a fax, a copy of which is attached as Exhibit C.

21. Plaintiff received the fax, a copy of which is attached as Exhibit C.

22. On or around June 8, 2016, Enclarity, Inc., and/or Corporate Does 1-3, sent or caused to be sent a fax, a copy of which is attached as Exhibit D.

23. Plaintiff received the fax, a copy of which is attached as Exhibit D.

24. Plaintiff attempted again to stop the faxes from being sent to the office and went to the website www.enclarity.com/providerfaqs.php, wherein the web browser was directed to <http://www.lexisnexis.com/risk/health-care/provider-form.aspx>.

25. The website <http://www.lexisnexis.com/risk/health-care/provider-form.aspx> contains information about multiple products that LexisNexis offers, including “Clinical Analytics”, “Fraud, Waste and Abuse”, “Data Management and Services”, “Identity Management, and “Revenue Cycle Optimization.” <http://www.lexisnexis.com/risk/health-care/provider-form.aspx>. (Exhibit E).

26. Along with the available products that Enclarity, Inc., and/or Corporate Does 1-3, offers is a “Provider Form” with at the bottom a box followed by the text, “To opt-out, check here – please include fax number above.”

27. It is unknown if a person can use this website to opt-out of receiving future faxes, faxes that are certain to be sent as the subject fax states in part, “[t]his information will be verified once each year.” (Exhibits A, C, D).

28. Plaintiff submitted a Provider Form in an attempt to stop future faxes from being sent to the fax number (773) 868-3700.

29. The link “Revenue Cycle Optimization” when clicked on takes the web browser to <http://www.lexisnexis.com/risk/health-care/revenue-cycle-optimization.aspx> which describes

a similar product used by Plaintiff's office that is a non-LexisNexis product, DrChrono.

30. Therefore in order to attempt to stop future unwanted faxes, Plaintiff was required to view a website that contained links to products and services offered by Enclarity, Inc., and/or Corporate Does 1-3.

31. The website <http://www.lexisnexis.com/risk/health-care/>, as stated in the prerecorded voice message that is played when a caller calls the telephone number on the bottom of the subject fax, (612) 746-2853, also contains information about multiple products that LexisNexis offers, including "Clinical Analytics", "Fraud, Waste and Abuse", "Data Management and Services", "Identity Management, and "Revenue Cycle Optimization." (Exhibit F).

COUNT I
TELEPHONE CONSUMER PROTECTION ACT

32. Plaintiff incorporates paragraphs 1-31 herein.

33. The TCPA makes unlawful the "use of any telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine . . ." 47 U.S.C. §227(b)(1)(C).

34. The TCPA defines "unsolicited advertisement" as any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission. 47 U.S.C.S. § 227(a)(4)

35. Exhibits A, C and D, in part, informs the recipient of services and products that LexisNexis offers to its clients and how its products and services can benefit the recipient.

36. Exhibits A, C and D, in part, informs the recipient of a website www.enclarity.com/providerfaqs.php which when visited will direct the web browser to <http://www.lexisnexis.com/risk/health-care/provider-form.aspx> which informs the person who is

visiting the site of the LexisNexis products and services that are available, in addition to perhaps an opt-out form. (Exhibit E).

37. The website <http://www.lexisnexis.com/risk/health-care/>, as stated in the prerecorded voice message that is played when a caller calls the telephone number on the bottom of the subject fax, (612) 746-2853, also contains information about multiple products that LexisNexis offers, including “Clinical Analytics”, “Fraud, Waste and Abuse”, “Data Management and Services”, “Identity Management, and “Revenue Cycle Optimization.” (Exhibit F).

38. Exhibits A, C and D promotes Enclarity, Inc., and/or Corporate Does 1-3 name, logo, contact information and website.

39. The websites that the fax and the telephone message, corresponding to the telephone number on the fax, all promote the commercial availability of Enclarity, Inc., and/or Corporate Does 1-3 services.

40. Exhibits A, C and D are a part of Enclarity, Inc., and/or Corporate Does 1-3 overall marketing plan to raise health care providers’ awareness of LexisNexis’ services.

41. Exhibits A, C and D is a part of on or more of Enclarity, Inc., and/or Corporate Does 1-3 overall marketing plan to gather information from health care providers so that it can sell it at a profit to its customers.

42. Exhibits A, C and D are advertisements.

43. Exhibits A, C and D were unsolicited.

44. Exhibits A, C and D were sent without Plaintiff’s express consent.

45. Exhibits A, C and D were sent without an established business relationship between Enclarity, Inc., and/or Corporate Does 1-3 and Plaintiff.

46. Plaintiff's opt-out was not honored as to the two subsequent faxes, Exhibits C and D, were sent.

47. Exhibits A, C and D do not contain a compliant opt-out notice as required by the TCPA.

48. The "Provider Form" with at the bottom a box followed by the text, "To opt-out, check here – please include fax number above" on the web page <http://www.lexisnexis.com/risk/health-care/provider-form.aspx> does not comply with the TCPA.

49. Unsolicited fax advertising is contrary to Illinois public policy, as set forth in 720 ILCS 5/26-3(b), which makes it a petty offense to transmit unsolicited fax advertisements to Illinois residents.

50. Plaintiff's and each class member's right of privacy was invaded, or costs of toner and ink were incurred, or time to review and/or delete the subject form faxes were expended.

WHEREFORE, Plaintiff requests that this Honorable Court to:

- a. Certify that this matter may proceed as a class action;
- b. Enter judgment in favor of Plaintiff and a certified class of all persons who were sent a fax in the form of Exhibit A, and its was received, four years prior to the filing of this Complaint, and against Defendants for damages under the TCPA including damages for willful conduct;
- c. Enter judgment in favor of Plaintiff and the class and against Defendants for Injunctive relief prohibiting Defendants from sending faxed advertisements without consent or a prior established business relationship, and from sending faxes that do not contain an opt-out notice that complies with the TCPA;

- d. Enter a judgment declaring that subject faxes sent to Plaintiff were unsolicited;
- e. Enter a judgment declaring that subject faxes sent to Plaintiff failed to provide an opt-out notice compliant with the TCPA;
- f. Enter a determination that Plaintiff is an adequate class representative;
- g. Enter a determination that Plaintiff's counsel is adequate class counsel;
- h. Award Plaintiff a fair, reasonable and adequate incentive award for being the named Plaintiff; and
- i. Award costs of suit, including an award of attorney's fees if permissible.

Respectfully submitted,

s/ Curtis C. Warner
Curtis C. Warner

Curtis C. Warner
Warner Law Firm, LLC
350 S. Northwest HWY Ste. 300
Park Ridge, IL 60068
(847) 701-5290 (TEL)
cwarner@warnerlawllc.com

TRIAL BY JURY DEMANDED

PLEASE TAKE NOTICE that Plaintiff demands a trial by jury.

Respectfully submitted,

s/ Curtis C. Warner
Curtis C. Warner

Curtis C. Warner
Warner Law Firm, LLC
350 S. Northwest HWY Ste. 300
Park Ridge, IL 60068
(847) 701-5290 (TEL)
cwarner@warnerlawllc.com

DOCUMENT PRESERVATION REQUESTS

PLEASE TAKE NOTICE that Defendants are requested to preserve all documents that relate to the identity of any potential putative class members who would have been send a fax in the form of Exhibit A going back four years from the filing of this complaint, including all fax logs, fax numbers, address and names. Defendants are further requested to preserve any and all documents which show any expressed prior consent to receive faxes in the form of Exhibit A. Defendants are requested to preserve any and all documents which show any established business relationship with any potential putative class members. Defendants are further requested to preserve the webpages <http://www.lexisnexis.com/risk/health-care/provider-form.aspx> and <http://www.lexisnexis.com/risk/health-care/> and all links and those webpages listed therein. Defendants are further requested to preserve and not to alter the website www.enclarity.com/providerfaqs.php and all capabilities of directing a web browser that accesses the website to any other website.

Respectfully submitted,

s/ Curtis C. Warner
Curtis C. Warner

Curtis C. Warner
Warner Law Firm, LLC
350 S. Northwest HWY Ste. 300
Park Ridge, IL 60068
(847) 701-5290 (TEL)
cwarner@warnerlawllc.com

CERTIFICATE OF SERVICE

I, Curtis C. Warner, hereby certify that on **September 13, 2016**, I filed the **Amended Complaint above** using the Court's CM/ECF system, which automatically will send notice to those parties who have appeared and are so registered.

A copy was also sent via email to:

John Ellis
Ellis Legal P.C.
250 South Wacker Drive, Suite 600
Chicago, Illinois 60606
(312) 967-7629 (Tel)
jellis@ellislegal.com

James F. McCabe
Tiffany Cheung
Ben Patterson
Morrison & Forester LLP
425 Market Street
San Francisco, California 94105-2482
(415) 268-7000 (Tel)
(415) 268-7522 (Fax)
jmccabe@mofo.com
tcheung@mofo.com
bpatterson@mofo.com

Counsel for Defendant Enclarity Inc.

Respectfully submitted,

s/ Curtis C. Warner
Curtis C. Warner

Curtis C. Warner
Warner Law Firm, LLC
350 S. Northwest HWY, Ste. 300
Park Ridge, IL 60068
(847) 701-5290 (TEL)
cwarner@warner.legal

EXHIBIT A



Provider: Dr. Florence Mussat
Address: 680 N Lake Shore Dr, Chicago, IL 60611
Practice Phone: (312) 751-9000
Secure Fax: (773) 868-3700

Re: Fax Number Verification for Delivery of Patient PHI (Internal ID:31118982)

The purpose of this Fax Verification Request is to help preserve the privacy and security of your patients' Protected Health Information ("PHI"), as defined by the Health Insurance Portability and Accountability Act ("HIPAA"). LexisNexis is seeking your cooperation to verify or update your information. We validate and update the fax in our system so our clients can use them for clinical summaries, prescription renewals, and other sensitive communications. Verifying the practice address, phone number and your secure fax number (s) for this location will minimize the potential privacy risks that could arise from information sent to an unsecured location. As part of our effort to assure that the transmission of PHI, it is vital to verify the information for Dr. Florence Mussat is accurate. This information will be verified once each year.

☐

YES - ALL of the printed information shown above is CORRECT and secure for communications containing PHI.

☐

NO - Updated info Below / Not at this location / Deceased (please circle).

Complete if changed:
Practice Address:
Practice Phone:
Provider Email:
Secure Fax:

SIGN & FAX BACK TO (866) 699-0422

I confirm that the above information is true and correct and safe for communication containing PHI to the best of my knowledge.

Name:
Title(if other than Provider):
Email(if other than Provider):

Signature:

Date:

Comments:

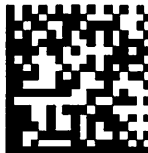


EXHIBIT B

WARNER LAW FIRM, LLC



www.warnerlawllc.com

February 19, 2015

FAX COVER SHEET

TO: LexisNexis AND / OR enclarity

FAX: (866) 699-0422

FROM: Curtis C. Warner
SENDER'S FAX: (312) 638-9139

RE: Dr. Florence Mussat
Fax Number Verification for Delivery of Patient PHI
(Internal ID:31118982)

To Whom It May Concern:

This law firm represents Dr. Florence Mussat who has instructed me to request your company(s) to stop faxing her.

You are advised to cease and desist your conduct of sending her faxes.

You have no consent or any established business relationship to continue to send her faxes. Neither does any affiliate, parent corporation, partner, independent contractor, third party, or any other person or business with whom you are associated with, share, or sell information to has consent or an established business relationship with Dr. Mussat to send her a fax.

Regards,

NUMBER OF PAGES 1 (including cover sheet)

cc: Dr. Mussat (via email)

IMPORTANT: This message is intended solely to be used by the individual or entity to which it is addressed. It may contain information which is privileged, confidential and otherwise exempt by law from disclosure. If you are not the intended recipient, and employee or agent responsible for delivering this message to its intended recipient, you are herewith notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately and delete this communication. Thank you. Warner Law Firm, LLC.

Subject: Successful transmission to 18666990422. Re: UNKNOWN

Date: Thursday, February 19, 2015 at 3:35:10 PM Central Standard Time

From: MetroFax <NoReply@metrofax.com>

To: cwarner@warnerlawllc.com <cwarner@warnerlawllc.com>

Dear Curtis,

Re: UNKNOWN

The 1 page fax you sent through MetroFax.com to 18666990422 was successfully transmitted at 2015-02-19 21:35:00.

The length of transmission was 50 seconds.

The receiving machine's fax ID: SFAX

If you need assistance, please visit our online help center at <http://www.metrofax.com/support>.

Thank you for using the MetroFax.com service.

Best Regards,
MetroFax.com

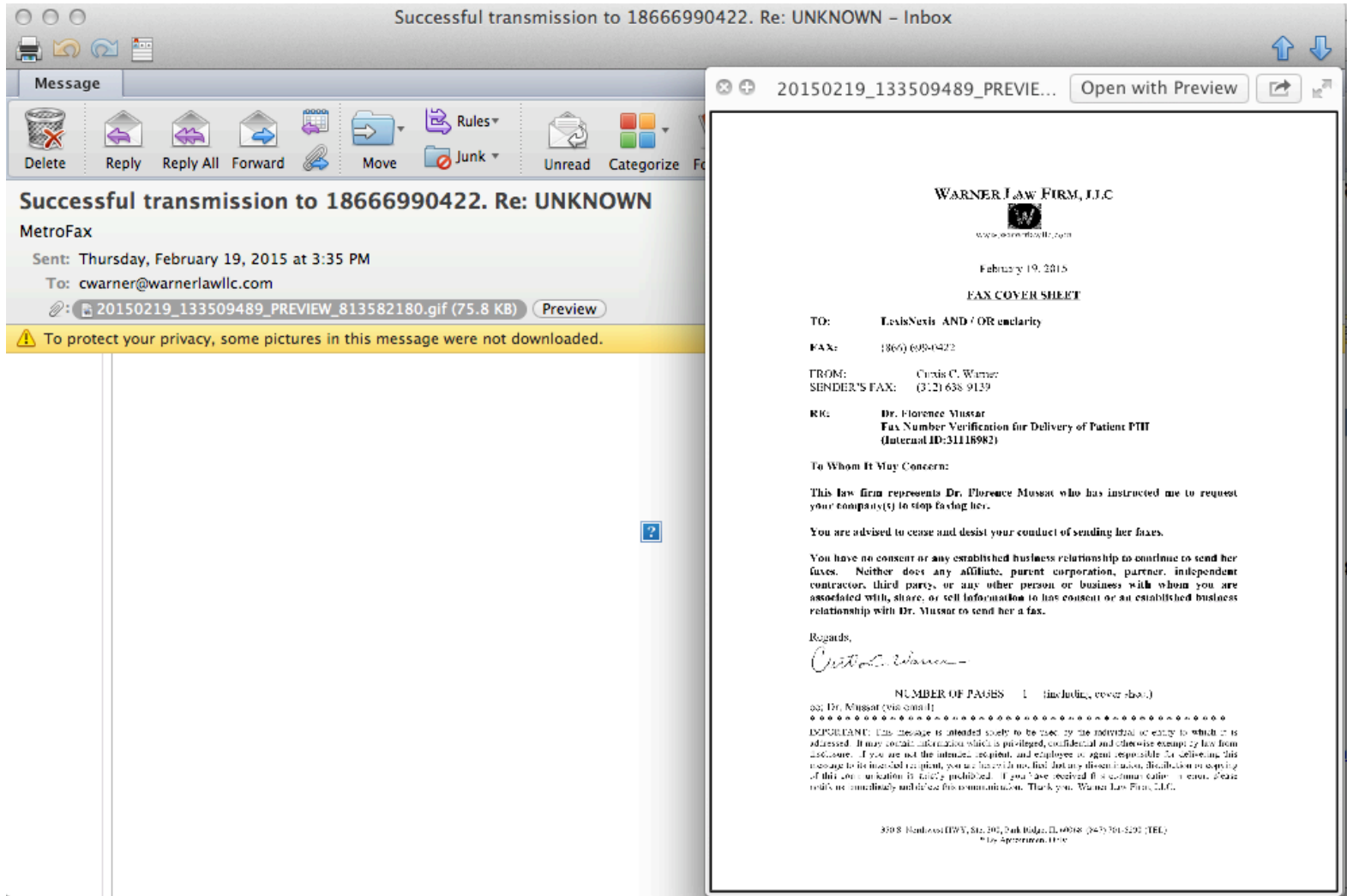


EXHIBIT C



Provider: Dr. Florence Mussat, MD
Address: 680 N Lake Shore Dr Ste 1030, Chicago, IL 60611
Practice Phone: (312) 751-9000
Secure Fax: (773) 868-3700

Re: Fax Number Verification for Delivery of Patient PHI (Internal ID:33684640)

The purpose of this Fax Verification Request is to help preserve the privacy and security of your patients' Protected Health Information ("PHI"), as defined by the Health Insurance Portability and Accountability Act ("HIPAA"). LexisNexis is seeking your cooperation to verify or update your information. We validate and update the fax in our system so our clients can use them for clinical summaries, prescription renewals, and other sensitive communications. Verifying the practice address, phone number and your secure fax number (s) for this location will minimize the potential privacy risks that could arise from information sent to an unsecured location. As part of our effort to assure that the transmission of PHI, it is vital to verify the information for Dr. Florence Mussat, MD is accurate. This information will be verified once each year.

☐

YES - ALL of the printed information shown above is CORRECT and secure for communications containing PHI.

☐

NO - Updated info Below / Not at this location / Deceased (please circle).

Complete if changed:

Practice Address:

Practice Phone:

Provider Email:

Secure Fax:

SIGN & FAX BACK TO (866) 699-0422

I confirm that the above information is true and correct and safe for communication containing PHI to the best of my knowledge.

Name:

Title(if other than Provider):

Email(if other than Provider):

Signature:

Date:

Comments:



EXHIBIT D



Provider: Dr. Florence Mussat, MD
Address: 680 N Lake Shore Dr Ste 1030, Chicago, IL 60611
Practice Phone: (312) 751-9000
Secure Fax: (773) 868-3700

Re: Fax Number Verification for Delivery of Patient PHI (Internal ID:33684640)

The purpose of this Fax Verification Request is to help preserve the privacy and security of your patients' Protected Health Information ("PHI"), as defined by the Health Insurance Portability and Accountability Act ("HIPAA"). LexisNexis is seeking your cooperation to verify or update your information. We validate and update the fax in our system so our clients can use them for clinical summaries, prescription renewals, and other sensitive communications. Verifying the practice address, phone number and your secure fax number (s) for this location will minimize the potential privacy risks that could arise from information sent to an unsecured location. As part of our effort to assure that the transmission of PHI, it is vital to verify the information for Dr. Florence Mussat, MD is accurate. This information will be verified once each year.

☐

YES - ALL of the printed information shown above is CORRECT and secure for communications containing PHI.

☐

NO - Updated info Below / Not at this location / Deceased (please circle).

Complete if changed:

Practice Address:

Practice Phone:

Provider Email:

Secure Fax:

SIGN & FAX BACK TO (866) 699-0422

I confirm that the above information is true and correct and safe for communication containing PHI to the best of my knowledge.

Name:

Title(if other than Provider):

Email(if other than Provider):

Signature:

Date:

Comments:



EXHIBIT E

WORLDWIDE: UNITED STATES

Careers | Contact Us |

Risk Home Our Solutions Newsroom Insights Customer Success About Us Product Sign In

Risk > About Us > **Provider Contact Form** Print Page

Health Care

Health Care

By Segment

Provider Form

Commercial Payer

Member Data Management

Payment Protection

Population Health Management

Provider Data Management

Provider Performance

Government Health Care

Life Sciences

Pharmacy

Provider

Provider Name*

Appointment Phone Number*

Practice Address

Practice Fax

NPI

TIN

Your Email

Business/Practice Name

☐ To opt-out, check here - please include fax number above.

Comments

Submit

By Capability

Clinical Analytics

Data Management and Services

Fraud, Waste and Abuse

Identity Management

Revenue Cycle Optimization

Products

Contact Us

Product or Service Inquiries

Call 800.869.0751
Or use our contact form

Customer Service

Call 866.237.2133
Or use our contact form
Product Sign On
Access Training



Industries

Hospitality and Travel
Insurance
Receivables Management
Retail
Utilities

Communications
Financial Services
Gaming

Capabilities

Compliance
Data Management
Fraud
Identity
Investigation

Communities

Credit Risk Blog
Fraud of the Day
Forum
HPCC Systems
Identity Management

About

Speaker's Bureau
Corporate Responsibility
Leadership
Careers
Product Index

Contact

Sales
Support
Feedback

Government
Health Care

[Site Map](#) [Contact Us](#) [Fact Act](#) [Consumer Access](#) [Terms & Conditions](#) [Privacy Policy](#)

[LexisNexis.com](#) [Legal & Professional](#)



Copyright © 2016 LexisNexis. All rights reserved. Cookies are set by this site. To decline them or learn more, visit our [Cookies page](#).

EXHIBIT F

WORLDWIDE: UNITED STATES ▼

Careers | Contact Us |

[Risk Home](#)[Our Solutions](#)[Newsroom](#)[Insights](#)[Customer Success](#)[About Us](#)[Product Sign In](#)[Risk > Health Care](#)[Print Page](#)**Health Care****Health Care****By Segment****Commercial Payer****Government Health Care****Life Sciences****Pharmacy****Provider****By Capability****Clinical Analytics****Data Management and Services****Fraud, Waste and Abuse****Identity Management****Revenue Cycle Optimization****Products****Contact Us****Product or Service Inquiries**

Call U.S: 866.396.7703

Or use our contact form

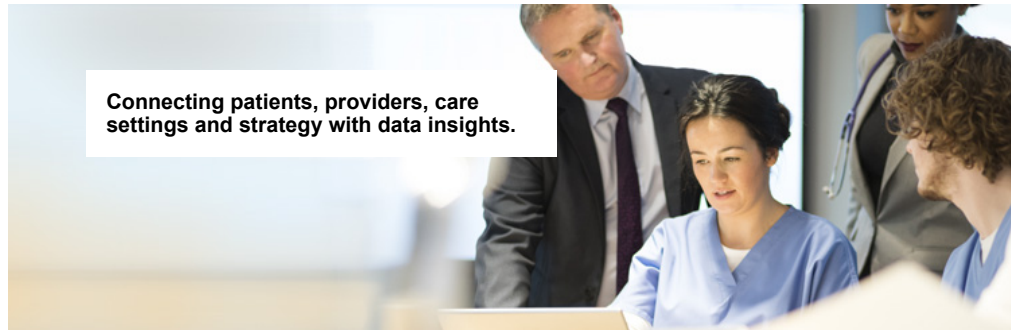
Customer Service

Call 866.237.2133

Or use our contact form

[Product Sign On](#)[Access Training](#)

LexisNexis has mastered the art of combining, analyzing and delivering data and analytics to optimize quality, performance, and impact across health care entities. Our solutions leverage the industry's most robust and accurate provider data, comprehensive public records, proprietary linking and claims analytics, predictive science, and computing platform to transform the business of health care.

**News****HIT Leaders & News:** Controlling access, protecting patients

LexisNexis Risk Solutions to Assist L.A. Care with Its Accurate Provider Directory Compliance Requirements Created by the Centers for Medicare and Medicaid Services and California Senate Bill 137

LexisNexis Risk Solutions Launches Provider Directory Accuracy Solution at AHIP Institute & Expo 2016

Health Market Science Rebranded as LexisNexis Risk Solutions for Pharmacy Market

LexisNexis Risk Solutions Addresses Value-based Health Care by Launching LexisNexis Provider Performance Monitor

[More News](#)**Did You Know?**

According to Managed Healthcare Executive data, around 30% of health care providers change hospital, clinic or group practice affiliations annually.

Featured Health Care Item[More Insights](#)

Industries

Hospitality and Travel
Insurance
Receivables Management
Retail
Utilities

Communications
Financial Services
Gaming
Government
Health Care

Capabilities

Compliance
Data
Management
Fraud
Identity
Investigation

Communities

Credit Risk Blog
Fraud of the Day
Forum
HPCC Systems
Identity
Management

About

Speaker's Bureau
Corporate
Responsibility
Leadership
Careers
Product Index

Contact

Sales
Support
Feedback

[Site Map](#) [Contact Us](#) [Fact Act](#) [Consumer Access](#) [Terms & Conditions](#) [Privacy Policy](#)

[LexisNexis.com](#) [Legal & Professional](#)

Copyright © 2016 LexisNexis. All rights reserved. Cookies are set by this site. To decline them or learn more, visit our [Cookies page](#).



APPENDIX 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FLORENCE MUSSAT, M.D., S.C.,)	
on behalf of plaintiff and,)	
the class members defined herein)	
)	16 C 7643
Plaintiff,)	
)	Judge Tharp
v.)	Magistrate Judge Weisman
)	
ENCLARITY INC.,)	
and JOHN DOES 1-10,)	
)	
Defendants.)	

PLAINTIFF’S SUPPLEMENTAL FED. R. CIV. P. 26(a)(1) DISCLOSURES

Pursuant to Fed. R. Civ. P. 26(a)(1), Plaintiff Florence Mussat, M.D., S.C., by and through its counsel, submits these supplemental disclosures:

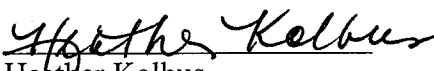
i. State the name and, if known the addresses and telephone numbers of all persons who you believe are likely to have discoverable information – along with the subjects of that information – that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.

SUPPELEMENTAL ANSWER: Plaintiff’s counsel identifies the following additional junk fax recipient, Dr. William P. Gress, 855 Maple Avenue, Homewood, IL 60430, (708) 957-8929 (FAX), who may be contacted through his counsel, Edelman, Combs, Latturner & Goodwin, LLC. Dr. William P. Gress has knowledge regarding what facsimiles are sent to (708) 957-8929 and what is authorized to be sent to that number.

ii. A copy of description by category and location of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody or

control, and may use to support its claims or defenses, unless the use would be solely for impeachment.

SUPPLEMENTAL ANSWER: Copies of the alleged junk faxes sent to Dr. Gress are attached hereto. Plaintiff will use the unsolicited advertising facsimiles attached to the amended complaint, as well as the unsolicited advertising facsimiles sent to Dr. Gress, Matthew Fulton, DDS, and Dr. G. Neil Garrett to support their claims.


Heather Kolbus

Daniel A. Edelman
Heather Kolbus
EDELMAN, COMBS, LATTURNER & GOODWIN, LLC
20 S. Clark Street, Suite 1500
Chicago, Illinois 60603
(312) 739-4200
(312) 419-0379 (FAX)

Curtis C. Warner
WARNER LAW FIRM, LLC
350 S. Northwest Hwy., Ste. 300
Park Ridge, IL 60068
(847) 701-5290

CERTIFICATE OF SERVICE

I, Heather Kolbus, certify that on January 25, 2019 I caused a true and accurate copy of the foregoing document to be served via U.S. Mail and email upon the following:

John Ellis - -jellis@ellislegal.com
Ellis Legal P.C.
250 S. Wacker Drive, Suite 600
Chicago, IL 60606

James F. McCabe - jmccabe@mofo.com
Tiffany Cheung - tcheung@mofo.com
Ben Patterson - bpatterson@mofo.com
Morrison & Forester LLP
425 Market Street
San Francisco, CA 94105

Curtis C. Warner - cwarner@warner.legal
Warner Law Firm, LLC
350 S. Northwest Hwy., Ste. 300
Park Ridge, IL 60068

s/ Heather Kolbus
Heather Kolbus

Daniel A. Edelman
Heather Kolbus
EDELMAN, COMBS, LATTURNER & GOODWIN, LLC
20 S. Clark Street, Suite 1500
Chicago, IL 60603
(312) 739-4200
(312) 419-0379 (FAX)



Provider: Dr. William Paul Gress, DC
Address: 855 Maple Ave, Homewood, IL 60430
Practice Phone: (708) 957-8900
Secure Fax: (708) 957-8929

Re: Fax Number Verification for Delivery of Patient PHI (Internal ID:36610452)

The purpose of this Fax Verification Request is to help preserve the privacy and security of your patients' Protected Health Information ("PHI"), as defined by the Health Insurance Portability and Accountability Act ("HIPAA"). LexisNexis is seeking your cooperation to verify or update your information. Verifying the practice address, phone number and your secure fax number(s) for this location will minimize the potential privacy risks that could arise from information sent to an unsecured location. As part of our effort to assure that the transmission of PHI, it is vital to verify the information for Dr. William Paul Gress, DC is accurate. This information will be verified once each year.

☐

YES - ALL of the printed information shown above is CORRECT and secure for communications containing PHI.

☐

NO - Updated info Below / Not at this location / Deceased (please circle).

Complete if changed:
Practice Address:
Practice Phone:
Provider Email:
Secure Fax:

SIGN & FAX BACK TO (866) 699-0422

I confirm that the above information is true and correct and safe for communication containing PHI to the best of my knowledge.

Name:
Title(if other than Provider):
Email(if other than Provider):

Signature:

Date:

Comments:



To stop receiving faxes from us, please call (888) 245-4619 or send a fax to (866) 699-0422. Please include the telephone number(s) of the fax machine(s) at which you do not want to receive faxes from us. A failure to comply by us within 30 days with a request to opt out of faxes (if advertisements) is unlawful.



Provider: Dr. William Paul Gress, DC
Address: 855 Maple Ave, Homewood, IL 60430
Practice Phone: (708) 957-8900
Secure Fax: (708) 957-8929

Re: Fax Number Verification for Delivery of Patient PHI (Internal ID:36610452)

The purpose of this Fax Verification Request is to help preserve the privacy and security of your patients' Protected Health Information ("PHI"), as defined by the Health Insurance Portability and Accountability Act ("HIPAA"). LexisNexis is seeking your cooperation to verify or update your information. Verifying the practice address, phone number and your secure fax number(s) for this location will minimize the potential privacy risks that could arise from information sent to an unsecured location. As part of our effort to assure that the transmission of PHI, it is vital to verify the information for Dr. William Paul Gress, DC is accurate. This information will be verified once each year.

☐

YES - ALL of the printed information shown above is CORRECT and secure for communications containing PHI.

☐

NO - Updated info Below / Not at this location / Deceased (please circle).

Complete if changed:
Practice Address:
Practice Phone:
Provider Email:
Secure Fax:

SIGN & FAX BACK TO (866) 699-0422

I confirm that the above information is true and correct and safe for communication containing PHI to the best of my knowledge.

Name:
Title(if other than Provider):
Email(if other than Provider):

Signature:

Date:

Comments:



To stop receiving faxes from us, please call (888) 245-4619 or send a fax to (866) 699-0422. Please include the telephone number(s) of the fax machine(s) at which you do not want to receive faxes from us. A failure to comply by us within 30 days with a request to opt out of faxes (if advertisements) is unlawful.